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Attorneys for Respondent  
RICHARD FRENKEL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ILLINOIS COMPUTER RESEARCH, LLC,  
Plaintiff and Counterclaim Defendant,

vs.

FISH & RICHARDSON P.C.,  
Defendant, Counterclaimant and Third  
Party Plaintiff,

vs.

SCOTT C. HARRIS,  
Third-Party Defendant and  
Counterclaimant

vs.

FISH & RICHARDSON P.C.,  
Defendant, Counterclaimant, Third  
Party Plaintiff and Counterclaim  
Defendant

Miscellaneous Action No.  
CV 5:08-mc-80075-JF (HRL)

**RICHARD FRENKEL'S NOTICE  
OF INTENT TO USE EVIDENCE  
FROM RELATED CASE, OR IN  
THE ALTERNATIVE, MOTION  
FOR LEAVE TO SUBMIT  
DECLARATION OF RICHARD  
FRENKEL FILED ON APRIL 21,  
2008 IN N.D. CAL. CASE 5:08-MC-  
80074-JF-HRL (DOCKET NO. 16)**

Hearing Date: May 13, 2008  
Time: 10:00 a.m.  
Courtroom: 2

Hon. Magistrate Judge Howard Lloyd

1 Richard Frenkel (“Frenkel”), a non-party to the underlying case,<sup>1</sup> hereby gives notice  
2 that he intends to rely upon the declaration he filed in opposition to the Motion Under  
3 Fed.R.Civ.P. 45 of Illinois Computer Research LLC and Scott C. Harris to Compel Richard  
4 Frenkel’s Deposition and Document Production in April 2008 (“motion to compel”) (N.D.  
5 Cal. Case 5:08-mc-80074-JF-HRL, docket no. 16). To the extent necessary, he requests  
6 leave to submit that declaration (N.D. Cal. Case 5:08-mc-80074-JF-HRL, docket no. 16),  
7 attached hereto as Exhibit “A,” in support of his motion to quash subpoena and for protective  
8 order.  
9

10 On April 7, 2008, Illinois Computer Research LLC and Scott C. Harris (collectively,  
11 “Issuers”) moved to compel Frenkel to provide testimony and produce documents (N.D. Cal.  
12 Case 5:08-mc-80074-JF-HRL, docket no. 1). Later that same day, Frenkel filed a motion to  
13 quash subpoena and for protective order (N.D. Cal. Case 5:08-mc-80075-JF-HRL, docket no.  
14 1). On April 21, 2008, Frenkel filed his response to Issuers’ motion to compel (N.D. Cal.  
15 Case 5:08-mc-80074-JF-HRL, docket no. 15). On that same day, Issuers withdrew their  
16 motion to compel (N.D. Cal. Case 5:08-mc-80074-JF-HRL, docket no. 14), and the  
17 following day filed their response to Frenkel’s motion to quash subpoena and for protective  
18 order (N.D. Cal. Case 5:08-mc-80075-JF-HRL, docket no. 21), taking the position that  
19 Frenkel is precluded from introducing anymore evidence in support of his motion to quash  
20 subpoena and for protective order. Response to Mot. to Quash pp. 9-10.  
21

22 We ask the Court to take notice of the related proceeding (N.D. Cal. Case 5:08-mc-  
23 80074-JF-HRL) and the substantial effort Frenkel took to provide a full response to the  
24

25  
26  
27 <sup>1</sup> *Illinois Computer Research LLC v. Fish & Richardson, P.C.*, pending in the United  
28 States District Court for the Northern District of Illinois, Eastern Division, Case No. 07 C  
5081.

1 Court. Issuers' withdrawal of the motion to compel means that the Court will not be able to  
2 decide Frenkel's motion to quash subpoena and for protective order on a complete record  
3 unless it references Frenkel's declaration filed in response to the motion to compel.

4 We do not know why the issuers raced to file their motion to compel and then,  
5 without notice to Frenkel's counsel, withdrew it on the date his response was due. Whatever  
6 their motivation, the effect of the withdrawal will preclude a full factual understanding of the  
7 issues if the Court sustains Issuers' objection to Frenkel supplementing the record.

8 We are providing this notice as soon as practicable for the court and for opposing  
9 counsel. N.D. Cal. Civil L.R. 7-3(c) ("The reply may include affidavits or declarations, as  
10 well as a supplemental brief or memorandum under Civil L.R. 7-4. ...").<sup>2</sup>

11 Wherefore, premises considered, Richard Frenkel hereby provides notice to the Court  
12 and to opposing counsel that he intends to rely upon the declaration he filed in opposition to  
13 Issuers' motion to compel, or in the alternative, respectfully requests that the Court grant  
14 leave to allow him to file his supplemental declaration in support of his motion to quash  
15 subpoena and for protective order.  
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26 <sup>2</sup> Once we have had an opportunity to fully digest the Issuers' voluminous response to the  
27 motions to quash subpoena and for protective order, Frenkel reserves the right to add a  
28 supplemental declaration and attach it to his reply, which is due on April 29, 2008.

1 Dated: April 24, 2008

MORGAN, LEWIS & BOCKIUS LLP

2 By /s/ Howard Holderness  
3 Howard Holderness

4 Attorneys for Respondent  
5 RICHARD FRENKEL

6 Dated: April 24, 2008

JACKSON WALKER L.L.P.

7 By /s/ Charles L. Babcock  
8 Charles L. Babcock

9 Attorneys for Respondent  
10 RICHARD FRENKEL

11 Dated: April 24, 2008

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12 P.C.

13 By /s/ George L. McWilliams  
14 George L. McWilliams

15 Attorneys for Respondent  
16 RICHARD FRENKEL

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vs.

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Defendant

Miscellaneous Action No.  
CV 5:08-mc-80074-JF (HRL)

**PROOF OF SERVICE**

**CERTIFICATE OF SERVICE**

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action. My business address is One Market St., Spear Tower, San Francisco, CA 94105.

On April 24, 2008, I served on the interested parties in said action the within document(s) as indicated on the attached service list:

**RICHARD FRENKEL'S NOTICE OF INTENT TO USE EVIDENCE FROM RELATED CASE, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO SUBMIT DECLARATION OF RICHARD FRENKEL FILED ON APRIL 21, 2008 IN N.D. CAL. CASE 5:08-MC-80074-JF-HRL (DOCKET NO. 16)**

- ☐ (Via Facsimile) by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ (Via U.S. Mail) by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- ☐ (Via Overnight Delivery—Federal Express) by placing the document(s) listed above in a sealed **Federal Express** envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a **Federal Express** agent for overnight delivery.
- ☐ (Via Hand Delivery—Attorney Service) by personally delivering, through an authorized courier/attorney service, the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by **e-mailing** the document(s) listed above to the addressee(s) noted below.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct. Signed April 24, 2008, in San Francisco, California.

\_\_\_\_\_/s/  
Dolores M. Rivera

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**Attorneys for Non-Party RICHARD  
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